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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 JOHN ROBERT DEMOS, JR.,)
09 Plaintiff,) CASE NO. C12-0915-RSM-MAT
10 v.) REPORT AND RECOMMENDATION
11 RON FRAKER,)
12 Defendant.)
13 _____)

14 Plaintiff John Demos applied for leave to proceed in forma pauperis (“IFP”) with a
15 proposed civil-rights complaint. (Dkts. 1, 1-1, 5.) Plaintiff was convicted in 1978 of
16 attempted rape and first-degree burglary and was sentenced to an indeterminate sentence of 240
17 months to life in prison. *See State v. Demos*, 619 P.2d 968 (Wash. 1980).

18 Plaintiff is well-known locally and nationally as an abusive litigant. He is under
19 pre-filing bar orders in a number of courts, including this Court, the Eastern District of
20 Washington, the Washington State courts, the Ninth Circuit Court of Appeals, and the United
21 States Supreme Court. *See, e.g., Demos v. Storrie*, 507 U.S. 290, 291 (1993). An Order of
22 this Court provides for the return without filing of any petition that seeks an extraordinary writ

01 pursuant to 28 U.S.C. §§ 1651, 2253 or 2254, unless accompanied by the filing fee. *See*
02 *Demos v. Stanley*, MC97-0031-JLW (W.D. Wash. Mar. 13, 1997). In addition, plaintiff may
03 submit only three IFP applications and proposed actions each year.¹ *See In re John Robert*
04 *Demos*, MC91-269-CRD (W.D. Wash. Jan. 16, 1992); *In re Complaints and Petitions*
05 *Submitted by John Robert Demos* (W.D. Wash. Dec. 15, 1982). Furthermore, under 28 U.S.C.
06 § 1915(g), plaintiff must demonstrate “imminent danger of serious physical injury” to proceed
07 IFP because he has had numerous prior actions dismissed as frivolous, malicious, or for failure
08 to state claim. *See Demos v. Lehman*, MC99-113-JLW (W.D. Wash. Aug. 23, 1999).

09 Plaintiff contends that the state supreme court recently altered aspects of his sentence
10 and that these circumstances, coupled with other federal cases, call into question his underlying
11 conviction. (Dkt. 1-1, at 3–4.) He therefore seeks the invalidation of his underlying
12 conviction, a new jury trial, costs and attorney fees, appointment of counsel, and \$300,000 in
13 damages. (*Id.* at 4.)

14 The Court finds that plaintiff’s § 1983 action may not proceed. First, none of
15 documents cited or documents appended suggest any infirmity in the underlying conviction: the
16 state supreme court either denied him relief or has not ruled. (Dkt. 1-1, at 12–21.) In *Heck v.*
17 *Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held that a § 1983 claim that
18 calls into question the lawfulness of a plaintiff’s conviction or confinement does not accrue
19 “unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by
20 the grant of a writ of habeas corpus.” *Id.* at 489. Plaintiff’s challenge to the fact of his current

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22 ¹ The Court notes that the present action is the **third** IFP application and proposed civil-rights complaint that plaintiff has filed in 2012. *See Demos v. United States*, C12-866-MJP-BAT (W.D. Wash., filed May 17, 2012); *Demos v. United States*, C12-867-TSZ-JPD (W.D. Wash., filed May 17, 2012).

01 confinement by way of this § 1983 action is therefore barred by *Heck*. Second, plaintiff's
02 proposed complaint does not contain "a plausible allegation that the prisoner faced imminent
03 danger of serious physical injury at the time of filing." *Andrews v. Cervantes*, 493 F.3d 1047,
04 1055 (9th Cir. 2007) (internal citations omitted). His instant application to proceed IFP thus
05 does not meet the "imminent danger" requirement under 28 U.S.C. § 1915(g). Third, plaintiff
06 sues either the state or state officials in their official capacities (the State of Washington, the
07 Governor, the State Attorney General, Superintendent Ron Fraker) or prosecutors acting in
08 their prosecutorial roles. All of the defendants are immune from this damages suit. *See*
09 *Howlett v. Rose*, 496 U.S. 356, 365 (1990); *Will v. Michigan Dep't of State Police*, 491 U.S. 58,
10 71 (1989); *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976).

11 The Court recommends DENYING plaintiff's IFP application (Dkt. 5) and
12 DISMISSING the proposed complaint without prejudice for failure to state a claim upon which
13 relief may be granted and for suing entities immune from damages. *See* 28 U.S.C.
14 §§ 1915(e)(2)(B(ii)–(iii), § 1915A(b)(1)–(2). Because this is the **third** IFP application and
15 proposed action filed by plaintiff this year, a standing bar order provides that he not be
16 permitted other such actions for the remainder of 2012. *See In re John Robert Demos*,
17 MC91-269-CRD (W.D. Wash. Jan. 16, 1992); *In re Complaints and Petitions Submitted by*
18 *John Robert Demos* (W.D. Wash. Dec. 15, 1982). A proposed Order is attached.

19 DATED this 13th day of June, 2012.

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22 Mary Alice Theiler
United States Magistrate Judge